

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

**MOTION TO COMPEL PRODUCTION OF ANY INTERCEPTED
COMMUNICATIONS OBTAINED IN THE ABSENCE OF A COURT ORDER
AND TO DISCLOSE ANY USE OF SUCH COMMUNICATIONS OR THEIR
FRUITS IN APPLICATIONS FOR FISA INTERCEPTS**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, and pursuant to the First and Fourth Amendments to the U.S. Constitution, hereby respectfully requests that this Honorable Court compel the government to (1) produce notice and the content of any intercepted communications obtained in the absence of a court order involving any of the Defendants, whether the target or not, and (2) disclose whether any intercepted communications obtained without court order, or the fruits thereof, of any individual, were used, directly or indirectly, in the applications seeking approval under the Foreign Intelligence Surveillance Act (“FISA”) for surveillance (including but not limited to phone and computer surveillance) in which Mr. Fariz or a co-Defendant was a target or a party. As grounds in support, Mr. Fariz states:

1. In the last few weeks, the press has reported, and President George W. Bush has acknowledged, that the government, particularly the National Security Agency (“NSA”), has engaged in domestic wiretapping without seeking approval from the Foreign Intelligence Surveillance Court pursuant to FISA. The NSA apparently engaged in wiretapping telephone

calls and e-mails of individuals suspected of links to Al Qaeda and related terrorist organizations when the call or e-mail ostensibly involved overseas communications.

2. On December 17, 2005, President Bush announced that he had authorized the NSA to engage in such surveillance without first obtaining warrants. *See, e.g.,* David E. Sanger, *In Address, Bush Says He Ordered Domestic Spying*, N.Y. Times (Dec. 18, 2005) (Attachment A).

3. Subsequently, the press reported that NSA had also acted on its own authority, without first obtaining formal approval from President Bush to conduct such domestic surveillance, in the weeks after September 11, 2001. *See, e.g.,* Eric Lichtblau & Scott Shane, *Files Say Agency Initiated Growth of Spying Effort*(Attachment B).

4. U.S. District Judge James Robertson resigned from the FISA Court, reportedly expressing privately a “deep concern that the warrantless surveillance program authorized by the president in 2001 was legally questionable and may have tainted the FISA court’s work.” Carol D. Leonnig & Dafna Linzer, *Spying Judge Quits in Protest*, Washington Post (Dec. 21, 2005) (Attachment C).

5. In the trial in this matter, the government relied heavily upon FISA-intercepted communications, producing a few hundred such communications into evidence.

6. The government has not alleged in this case that Mr. Fariz or his co-Defendants were ever associated with Al Qaeda. In light of the revelation that the government engaged in any unauthorized surveillance of individuals in the United States,

however, Mr. Fariz demands the disclosure of whether any agency of the government engaged in any surveillance in the absence of a court order relating to the instant case.

7. Specifically, Mr. Fariz requests that this Court order the government to (1) produce notice and the content of any intercepted communications, obtained in the absence of a court order, involving any of the Defendants, whether the target or not, and (2) disclose whether any intercepted communications obtained without court order, or the fruits thereof, of any individual, were used, directly or indirectly, in the applications seeking approval under FISA for surveillance (including but not limited to phone and computer surveillance) in which Mr. Fariz or a co-Defendant was a target or a party.

8. Mr. Fariz has previously requested, by letter to the prosecution, notice of unauthorized interceptions. (Letter of June 9, 2004, attached as Attachment D). Mr. Fariz reasserts this longstanding request.

WHEREFORE, Defendant Hatem Naji Fariz respectfully requests that this Court compel the government to (1) produce notice and the content of any intercepted communications obtained in the absence of a court order involving any of the Defendants, whether the target or not, and (2) disclose whether any intercepted communications obtained without court order, or the fruits thereof, of any individual, were used, directly or indirectly, in the applications seeking approval under FISA for surveillance (including but not limited

to phone and computer surveillance) in which Mr. Fariz or a co-Defendant was a target or a party.

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2006, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian.

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Assistant Federal Public Defender